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State v. Johnson Appellant's Reply Brief Dckt. 41168

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

DARRICK DONAHUE JOHNSON,

Defendant-Respondent.

No. 41168

Kootenai Co. Case No.
CR-2012-17976

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI

HONORABLE FRED M. GIBLER
District Judge

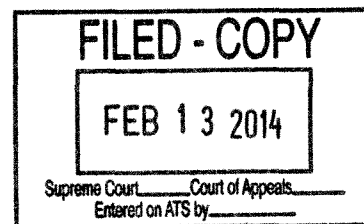
LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-APPELLANT

MALCOLM S. DYMKOSKI
Attorney at Law
1110 W Park Place, Suite 210
Coeur d'Alene, ID 83814
(208) 765-6077



ATTORNEY FOR
DEFENDANT-RESPONDENT

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ARGUMENT

Because Johnson Appropriated Money That He Held In Trust For A Specific Purpose, He Is Guilty Of Grand Theft By Unauthorized Control

A. Introduction

The state contends in this appeal that where the victim gives the defendant money with the specific understanding that the money will be paid over to a third party for a specific purpose, the defendant commits theft by unauthorized control where, instead of accomplishing that specific purpose, he appropriates the money to himself. (Appellant's brief, pp. 5-11.) Thus, when Beaudry gave Johnson money so Johnson could buy four motorcycles on Beaudry's behalf, the only authorized use of the money was the motorcycle purchase and Johnson committed grand theft by unauthorized control when he appropriated the money. (Id.) Johnson responds by claiming he owned the money once it was turned over to him, and he therefore only defaulted on a contract. (Respondent's brief pp. 8-22.) Application of the correct legal standards, however, shows that where, as here, money is paid over in trust that it will be used for a specific purpose, the recipient of the money commits theft by unauthorized control when he appropriates the money for himself. Therefore, the jury verdict should be affirmed and the district court's order overturning that verdict was error.

B. Standard Of Review

"In assessing the sufficiency of evidence, we will uphold a judgment of conviction entered upon a jury verdict so long as there is substantial evidence

upon which a rational trier of fact could conclude that the prosecution proved all essential elements of the crime beyond a reasonable doubt.” State v. Jones, 154 Idaho 412, 417, 299 P.3d 219, 224 (2013) (internal quotations omitted). The appellate court will not substitute its view “as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence.” State v. Chacon, 145 Idaho 814, 818, 186 P.3d 670, 674 (Ct. App. 2008).

C. Beaudry’s Payment To Johnson For The Special Object Of Using The Money To Obtain Motorcycles Created A Bailment Over The Funds Intended For That Special Purpose

The evidence supports the conclusion that Beaudry’s delivery of money to Johnson was “in trust for the execution of a special object,” namely for Johnson to purchase four motorcycles on Beaudry’s behalf, and therefore the delivery of the funds created a bailment. See Bridge Tower Dental, P.A. v. Meridian Computer Center, Inc., 152 Idaho 569, 272 P.3d 541, (2012) (quoting Loomis v. Imperial Motors, Inc., 88 Idaho 74, 78, 396 P.2d 467, 469 (1964)). Because Johnson appropriated the money to his own purposes instead of using it for the special object for which he had been entrusted the funds, he committed theft by unauthorized control. (Appellant’s brief, pp. 6-11.)

Johnson first asserts that his agreement with Beaudry did not require “that the check be deposited into a trust fund, by which the funds would be deemed to still be owned by Beaudry Motor Inc.” (Respondent’s brief, pp. 9-10.) While a contractual requirement to establish a separate trust fund would certainly have been evidence of the creation of bailment, Johnson cites no authority, and the

state is unaware of any, that such an account is a *legal prerequisite* to creating a bailment. See Bridge Tower Dental, P.A., *supra* (defining bailment without reference to trust account); Loomis, *supra* (same). There is certainly nothing in the theft by unauthorized control statute, I.C. § 18-2403(3), that mentions trust accounts or limits thefts of cash by unauthorized control to circumstances where the cash was taken from a trust account. Because there is no element of the existence of a trust account in the statute, Johnson's argument is without legal basis. See Hall v. State, 155 Idaho 610, ___, 315 P.3d 798, 809 (2013) (statutes must be interpreted according to their literal words).

Johnson next argues that if the state is correct about him taking funds entrusted to him for a special purpose, and therefore creating a bailment, he is guilty of embezzlement. (Respondent's brief, p. 10.) This may be so. However, a prosecutor has charging discretion where two criminal statutes cover the same criminal act, so long as the statutes may be interpreted harmoniously. State v. Barnes, 133 Idaho 378, 381-82, 987 P.2d 290, 293-94 (1999); State v. Trusdall, 2014 WL 503480 (Idaho App., February 10, 2014). The two definitions of theft (embezzlement and theft by unauthorized control) are certainly harmonious. I.C. § 18-2401(1) ("Conduct denominated theft in this chapter constitutes a single offense"); see also State v. Sticklen, 136 Idaho 264, 269-70, 32 P.3d 158, 163-64 (Ct. App. 2001) (reviewing both theft by unauthorized control and embezzlement theories of grand theft where defendant stole money from employer). That his offense could be characterized as both theft by

embezzlement and theft by unauthorized control does not show any deficiency in the evidence that Johnson committed theft.

Johnson next contends he or his company obtained “unconditional ownership of the funds” because he received a check. (Respondent’s brief, pp. 11-13.) This argument fails both factually and legally. Factually the evidence established that Johnson agreed to accept the money under a contract whereby he received a commission and was required to use the remaining funds for the specific purpose of buying four motorcycles for Beaudry. (Appellant’s brief, pp. 1-3.) His receipt of the funds (other than his commission) therefore did have a condition: that they be used to purchase the motorcycles for Beaudry. The argument fails legally because Beaudry’s act of paying by check instead of cash did not negate the terms or conditions under which the funds were delivered. The law cited by Johnson (I.C. §§ 28-3-104(1), 28-3-106(1) (cited at Appellant’s brief, p. 12)) meant only that Johnson had the right to *cash the check*. The state did not allege that he committed theft by *cashing the check* (or depositing the funds from the same into his account). Instead, it was Johnson’s appropriation of the funds *after* he deposited the check that constituted the theft. Johnson’s argument that the use of a check as the method of payment eliminated all conditions in the contract and gave him greater claim to the money than if it had been paid in cash is meritless.

Johnson next argues that someone who steals property after lawfully acquiring it does not commit theft by unauthorized control, citing State v. Henninger, 130 Idaho 638, 945 P.2d 864 (Ct. App. 1997), and State v. Culbreth,

146 Idaho 322, 193 P.3d 869 (Ct. App. 2008). (Respondent's brief, pp. 13-16.¹) As already shown, these cases do not stand for that proposition. (See Appellant's brief, pp. 9-10.)

Under the common law the crime of larceny required that felonious intent coincide with a taking, but if felonious intent was formed after obtaining lawful possession the crime was embezzlement. State v. Jesser, 95 Idaho 43, 501 P.2d 727 (1972). Johnson's argument that the Idaho Court of Appeals has reinstated the old common law larceny standard and applied it to all grand thefts (including embezzlement offenses) does not withstand scrutiny. Grand theft, unlike larceny, is not limited to taking, but also includes exercising unauthorized control. I.C. § 18-2403(3) ("takes or exercises unauthorized control over" (emphasis added)). Johnson was charged with exercising unauthorized control. (R., pp. 30-31.) That Johnson had no felonious intent upon receiving the money is irrelevant because he was not charged with unlawful taking; the relevant question was his intent when he exercised unauthorized control over the money. Johnson's argument that he had to have felonious intent at a time other than when he committed the criminal act for which he was charged is meritless. See I.C. § 18-114 (crime requires union of act and intent).

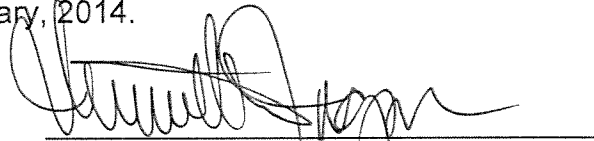
¹ Johnson also argues that the state failed to prove exactly where the money went (Respondent's brief, pp. 16-20), or exactly whom he stole it from (Respondent's brief, pp. 21-22). Johnson is apparently asserting these arguments as alternative bases for affirming the district court, because Johnson's factual claims regarding what the evidence shows is directly contrary to those articulated by the district court. (Tr., p. 93, L. 14 – p. 94, L. 18.) Because these arguments have neither factual merit nor ascertainable legal relevance the state is not responding to them in this brief.

Finally, Johnson argues that he may not be criminally punished for a debt caused by a breach of contract. (Respondent's brief, pp. 22-23.) This is a restatement of the district court's conclusion that because Johnson acquired the money in question pursuant to a legitimate contract, he could not have stolen the money when he later appropriated it. (See Tr., p. 269, Ls. 21-25.) While certainly not all breaches of contract are thefts, the fact that a defendant's theft also breached a contract does not insulate him from criminal accountability. The evidence demonstrated that Johnson received the money in question, except for a commission, in trust to perform a specific transaction that Beaudry could not himself perform. Johnson is no different from an attorney who receives a payment meant to settle a claim but instead keeps the money; a real estate agent who receives money to purchase a house but instead keeps the money; or a boy who receives money to buy a Christmas turkey but instead keeps the money. All of these would be theft. Johnson had authorized control over the money *only* to buy motorcycles for Beaudry. When he appropriated the money for himself he exercised unauthorized control. The district court erred and should be reversed.

CONCLUSION

The state respectfully requests this Court to reverse the district court's judgment of acquittal, reinstate the jury verdict, and remand for sentencing proceedings.

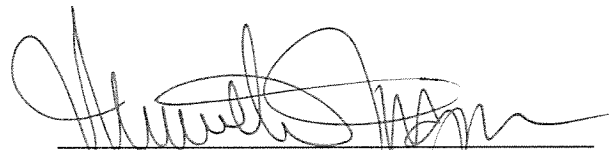
DATED this 13th day of February, 2014.


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of February, 2014, I caused two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

MALCOLM S. DYMKOSKI
Attorney at Law
1110 W Park Place, Suite 210
Coeur d'Alene, ID 83814


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ